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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOOKENDS & BEGINNINGS LLC, *on behalf of* :
itself and all others similarly situated, :
:
Plaintiff, :
:
-against- :
:
AMAZON.COM, INC., *et al.*, :
:
Defendants. :
:
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1:21-cv-2584-GHW-VF

ORDER

GREGORY H. WOODS, United States District Judge:

On August 3, 2023, Judge Figueredo issued a Report and Recommendation recommending that the Court grant Defendants’ motions to dismiss. Dkt. No. 203 (the “R&R”). In the R&R, Judge Figueredo determined that Plaintiff’s Second Amended Complaint fails to state a claim under the Robinson-Patman Act or the Sherman Act because, among other things, the Second Amended Complaint fails to plausibly allege that the pricing differential offered to Amazon was not the result of materially different contract terms and because the Second Amended Complaint lacks allegations to support a plausible inference of a conspiracy between the Publishers or between Amazon and the Publishers.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within fourteen days of receiving a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). The Court reviews for clear error those parts of the report and recommendation to which no party has timely objected. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008) (citation

omitted); *see also* Fed. R. Civ. P. 72(b), advisory committee’s note (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

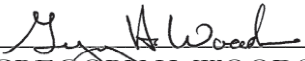
No objection to the R&R was submitted within the fourteen-day window. *See* Dkt. No. 205 (letter from Plaintiff stating it “does not intend to submit objections” and “consents to dismissal”). The Court has reviewed the R&R for clear error and finds none. *See Braunstein v. Barber*, No. 06 Civ. 5978 (CS) (GAY), 2009 WL 1542707, at *1 (S.D.N.Y. June 2, 2009) (explaining that a “district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record”). The Court therefore accepts and adopts the R&R in its entirety. For the reasons stated in the R&R, Defendants’ motions to dismiss are granted.

The R&R does not specifically address whether Plaintiff should be granted leave to replead the complaint yet again. The Court recognizes that it “is the usual practice upon granting a motion to dismiss to allow leave to replead.” *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 48 (2d Cir. 1991); *see also* Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”). However, here, the Court finds good reason to deny leave to amend. *See TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) (“Leave may be denied ‘for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party.’” (quoting *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007))). Defendants moved for dismissal of the action with prejudice. Plaintiff has already amended the complaint twice, most recently following an opinion of the Court. Plaintiff has not requested leave to amend the complaint, has not suggested any facts that Plaintiff might add to its pleadings to cure the deficiencies that have been identified by the Court, and has, instead, expressly consented to the dismissal of this action. Therefore, the motions to dismiss are granted with prejudice.

The Clerk of Court is directed to terminate the motions pending at Dkt. Nos. 179 and 181, to enter judgment for Defendants, and to close this case.

SO ORDERED.

Dated: August 15, 2023
New York, New York



GREGORY H. WOODS
United States District Judge